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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,143	12/01/2003	Mary Lucille DeLucia	18897	2664
23556	7590	01/10/2006		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER MOORE, MARGARET G	
			ART UNIT	PAPER NUMBER

1712

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/725,143	<b>Applicant(s)</b> DELUCIA ET AL.	
	<b>Examiner</b> Margaret G. Moore	<b>Art Unit</b> 1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 to 25 is/are pending in the application.
- 4a) Of the above claim(s) 1 to 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19 to 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/1/04, 1/18/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1 to 9, drawn to a multilayered film, classified in class 428, subclass 349.
  - II. Claims 10 to 18, drawn to a process, classified in class 264, subclass 241.
  - III. Claims 19 to 25, drawn to a film, classified in class 428, subclass 447.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group I and Group III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a non-breathable thermoplastic film or a film having a WVTR value of, for instance, 200 g/m<sup>2</sup>/24 hours and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. Inventions of Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make different products, such as products that do not meet the claimed WVTR requirement or layers having an overall thickness of greater than about 30 micrometers.

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4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with James Arnold on 1/3/2006 a provisional election was made with traverse to prosecute the invention of Group III, claims 19 to 25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1 to 18 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).
7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
8. Claims 19 and 21 to 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Isaka et al.

Isaka et al. teach olefin packaging laminates comprising a base layer formed of a polypropylene and having on at least one surface a blend of polymers. See the abstract. Column 7, lines 10 to 26, teaches adding a silicone oil in an amount of from .01 to .15 parts by weight to the surface layer. This amount meets that found in claim 19 and as such Isaka et al. anticipate claim 19. Column 2 describes making a B/A/B combination in which the polypropylene base layer (meeting claims 24 and 25) has on both surfaces the blend of polymers. This meets claims 22 and 23. Note that the poly-

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propylene layer is free of added siloxane, thereby meeting the less than .01 requirement in claims 21 and 23.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Isaka et al. in view of Foster et al.

Isaka et al. teach epoxy, amino and polyether modified silicones but fail to specifically show or provide a structural formula for such silicones.

Foster et al. teach olefin films that have silicone additives. The additives improve various properties of the olefin film. See for instance column 1, lines 10 to 40. These silicones correspond to the silicone in claim 20. This reference differs from that claimed in that Foster et al. do not specifically teach a thermoplastic film having a surface that comprises the silicone.

In view of the teachings of Isaka et al., directing the skilled artisan to include an amino, epoxy or polyether modified siloxane in the polyolefin composition thereof, one having ordinary skill in the art would have been motivated to look to amino, epoxy or polyether modified siloxanes that are known to be useful or beneficial in polyolefin films. In fact, the selection of the siloxanes taught by Foster et al. as a siloxane in Isaka et al. would be particularly preferred by the skilled artisan in view of the various benefits associated therewith, as disclosed by Foster et al. In this manner claim 20 is rendered obvious.

11. Balloni et al. and O'Brien are cited as being of general interest. These references are not believed to be any closer to the instant claims than the Isaka et al. reference

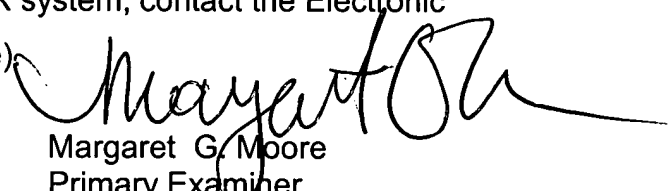
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cited above. The Examiner did not make rejection over these references since such rejections would have been redundant.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 571-272-1090. The examiner can normally be reached on Monday to Wednesday and Friday, 10am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Margaret G. Moore  
Primary Examiner  
Art Unit 1712

mgm  
01/03/2006